

9-90.000

NATIONAL SECURITY

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9-90.010 National Security

National security encompasses the national defense, foreign intelligence and counterintelligence, international security, and foreign relations. When national security issues arise during a criminal prosecution, they must be resolved through careful coordination by the Department of Justice (Department) with high level officials from the intelligence, military and foreign affairs communities. In addition, the Attorney General, or the Attorney General's designee, has certain statutory authority and obligations related to national security prosecutions. That authority and those obligations may be properly exercised and met only with appropriate coordination with the Department by the respective United States Attorneys' Offices (USAOs). A list of all prior approval, consultation and notification requirements related to national security can be found in USAM 9-90.020, below. The Internal Security Section (ISS) of the Criminal Division has supervisory authority over all offenses in this chapter.

9-90.020 National Security Matters -- Prior Approval, Consultation, and Notification Requirements

A. Authority to Conduct Prosecutions Relating to the National Security. The enforcement of all criminal laws affecting, involving or relating to the national security, and the responsibility for prosecuting criminal offenses, such as conspiracy, perjury and false statements, arising out of offenses related to national security, is assigned to the Assistant Attorney General (AAG) of the Criminal Division.

All prosecutions affecting, involving or relating to the national security shall be conducted, handled, or supervised by the AAG, Criminal Division, or higher authority. 28 C.F.R. § 0.61. The ISS of the Criminal Division, under the supervision of the AAG or a higher authority, conducts, handles, and supervises prosecutions affecting, involving or relating to the national security.

Prosecution of a case affecting, involving, or relating to the national security shall not be instituted without the express authorization of the Criminal Division or higher authority. The Criminal Division shall be consulted before an arrest is made, a search warrant is obtained, a grand jury investigation is commenced, immunity is offered, an indictment is presented, an information filed, or a civil injunctive action filed, a prosecution is declined, a count is dismissed, a sentencing commitment or other disposition is made, or an adverse ruling or decision is appealed in cases affecting, involving, or related to the national security as defined in this section.

Criminal provisions affecting, involving, or relating to the national security are:

2 U.S.C. § 192 (Contempts of Congress Related to National Security)

8 U.S.C. § 1185(b) (Travel Controls of Citizens)

18 U.S.C. § 219 et seq. (Officers and Employees of the United States Acting as Foreign Agents)

18 U.S.C. § 791 et seq. (Espionage; Unauthorized Disclosure of Classified Information)

18 U.S.C. § 951 et seq. (Neutrality Laws)

18 U.S.C. § 1030(a)(1) (Computer Espionage)

18 U.S.C. § 1542 et seq. (Passport Violations Related to National Security)

18 U.S.C. § 1924 (Unauthorized Removal and Retention of Classified Documents or Material)

18 U.S.C. § 1831 (Economic Espionage)

18 U.S.C. § 2151 et seq. (Sabotage)

18 U.S.C. § 2381 et seq. (Treason, Sedition and Subversive Activities)

22 U.S.C. § 611 et seq. (Foreign Agents Registration)

22 U.S.C. § 2778 (Arms Export Control Act)

42 U.S.C. § 2274 to 2278, 2284, and other Atomic Energy Violations that Affect National Security (Atomic Energy Act)

50 U.S.C. § 421 (Intelligence Identities Protection Act)

50 U.S.C. § 782 et seq. (Communication of Classified Information by Government Officer or Employee)

50 U.S.C. § 851 et seq. (Registration of Person Who Has Knowledge Concerning Espionage Activities)

50 U.S.C. § 1701 et seq. (International Emergency Economic Powers Act)

50 U.S.C. § 2401 et seq. (Export Administration Act)

50 U.S.C. App. § 5(b) (Trading With the Enemy Act)

B. Consultation Requirements. Consultation with the ISS is required in all cases in which classified information plays a role in the prosecutive decision, and all cases that require the protections afforded by the

Classified Information Procedures Act, 18 U.S.C. app. §§ 1-16, i.e., cases in which classified information may be disclosed during the pretrial, trial and appellate stages of the litigation.

Before initiating a prosecution under 2 U.S.C. § 441e, Campaign Contributions by Foreign Nationals, the Registration Unit of the ISS, (202) 514-1216, should be consulted.

9-90.050 National/International Security Coordinators in United States Attorneys' Offices

Each United States Attorney's Office (USAO) shall designate an Assistant United States Attorney as the National/International Security Coordinator. The National/International Security Coordinator is intended to be the initial point of contact for the office on matters relating to foreign relations, intelligence and national defense. [In some offices, the duties of the National/International Security Coordinator may be divided between foreign affairs and national security issues due to the volume of matters within the office.] The National/International Security Coordinator is responsible for, among other things, notifying the Chief of the ISS whenever national security issues arise in the USAO in the course of prosecutions of offenses not related to the national security. In any instance in which the USAO seeks to initiate contact with an agency of the intelligence community regarding national security issues arising during a criminal investigation or prosecution, it is the duty of the National/International Security Coordinator to initiate contact with the Chief of ISS prior to undertaking contact with the intelligence community.

The National/International Security Coordinator shall maintain a top secret clearance in order to review and use classified information in connection with national security investigations or prosecutions. The National/International Security Coordinator shall be familiar with Departmental policies related to national security prosecutions and investigations including disclosure of classified information to the grand jury.

The National/International Security Coordinator's primary responsibilities, acting in his or her capacity as point of contact for foreign relations, include acting as the liaison on all incoming and outgoing requests for extradition and mutual legal assistance, and ensuring the timely submission of supporting documents.

The National/International Security Coordinator should be knowledgeable of relevant Department policies, forms, briefs, and memoranda in the area of international affairs, intelligence and national security issues and should serve as the in-house resource and trainer on those issues.

See the Criminal Resource Manual at 2048 for the text of a memorandum that directed United States Attorneys to designate a prosecutor as a National/International Security Coordinator.

9-90.100 General Policies Concerning Prosecutions For Crimes Directed at National Security and for Other Crimes in which National Security Issues May Arise

The Attorney General has determined that all criminal cases relating to activities directed against the national security (*See* USAM at 9-90.300 et seq.), as well as collateral offenses such as perjury that arise out of such activities, are to be supervised by the Assistant Attorney General (AAG), Criminal Division. Although the AAG may assign those cases within the Criminal Division, prosecution of national security cases will ordinarily be handled by the USAO in the district where venue lies. When a national security investigation is initially referred to the Criminal Division, the AAG, or his/her designee, will notify the United States Attorney in that district as soon as possible following the referral. In either event, the AAG shall retain general supervisory authority over the conduct of the case from its inception until its conclusion, including appeal.

When national security issues arise in United States Attorneys' Offices in the course of prosecutions of offenses not related to the national security, that district's National/International Security Coordinator must notify

the Chief of the Internal Security Section (ISS). That Section Chief shall be responsible for insuring that the Assistant United States Attorney (AUSA) assigned to the case is aware of and complies with Departmental policies related to national security prosecutions.

The Criminal Resource Manual contains copies of policy memoranda from the Deputy Attorney General

September 21, 1994, Memorandum from Deputy Attorney General Criminal Resource Manual at 2049
concerning Requirement of Consultation on National
Security Issues

May 5, 1995, Memorandum From Deputy Attorney General Criminal Resource Manual at 2050
Concerning Provision of National Security Information to Judges and Staff and Use
of Intelligence Agency Attorneys

May 5, 1995, Memorandum from Deputy Attorney General Criminal Resource Manual at 2051
Concerning Focal Points for Initial Contacts with Intelligence Community in
Criminal Cases

9-90.200 Policies and Procedures for Criminal Cases That Involve Classified Information

With the concurrence of the appropriate Deputy Assistant Attorney General (DAAG), Criminal Division, or of the DAAG's designated Criminal Division Section Chief, the Department attorney or the assigned Assistant United States Attorney may seek access to classified information in the custody and control of one or more of the United States intelligence agencies. The Criminal Division's Internal Security Section (ISS) has primary responsibility to assist all Departmental officials and USAOs on all matters related to national security, including approval of requests for production of preexisting classified information in connection with an anticipated or ongoing criminal prosecution. Other sections of the Criminal Division may also assist, according to the subject matter of the activity involved in a particular prosecution. Occasionally, a law enforcement agency may also possess documents that are classified for national security purposes and which should be reviewed in connection with a criminal case. The procedures discussed herein also apply to those documents.

The Classified Information Procedures Act (CIPA), Title 18, United States Code, App. III, is the mechanism by which the disclosure of classified information must be controlled during the course of a criminal prosecution. ISS is responsible to insure proper adherence to CIPA, at the pre-trial, trial, and appellate stages of a prosecution. ISS personnel will assist the prosecuting attorney in properly drafting a request to an intelligence agency for production of its information and/or materials for review by the Assistant United States Attorney and will provide advice and consultation regarding review and use of those materials.

There are certain unique requirements that apply to cases involving classified information. First, only the Attorney General, the Deputy Attorney General, the Associate Attorney General or the Assistant Attorney General (AAG), Criminal Division, can authorize the declination of a prosecution for national security reasons. CIPA sections 12 and 14. Such declinations must be included in a report submitted to Congress pursuant to the requirements of Section 13 of CIPA. This report is initially prepared by the ISS.

Further, classified information that is or may be relevant to a criminal prosecution cannot be utilized, even for discovery purposes, without coordinating with the agency that is responsible for classifying or declassifying that information. This rule applies to oral disclosures of classified information, such as certain statements by present or former government employees, or contract employees who hold or held security clearances and were given access to classified information. *See also* USAM 9-90.240.

Because of regulatory limitations on dissemination of classified information, special considerations apply to investigations that involve classified information. First, when interviewing witnesses, classified information may be discussed only if the witnesses have appropriate security clearances and the agency that classified the

information has approved such disclosure. *See also* the Criminal Resource Manual at 2056. Second, although the grand jurors are precluded under Fed. R. Crim. P. 6(e)(2) from disclosing matters occurring before the grand jury, a prosecutor nevertheless may not disclose classified information to the grand jury except by agreement of the agency responsible for classifying that information. Third, witnesses, subjects or targets of an investigation who have lawfully acquired classified information cannot lawfully disclose such information to their uncleared attorneys. Those attorneys should therefore either obtain a security clearance that would allow access to the classified information or seek to have the information declassified. If the defense attorney chooses the latter alternative, the prosecutor must file a motion requesting the court to issue a protective order that controls the use of that classified information and protects it from disclosure to unauthorized persons. For guidance on how to handle classified information during investigations or before the grand jury, see USAM 9-90.230 and contact the ISS.

9-90.210 Contacts with the Intelligence Community Regarding Criminal Investigations or Prosecutions

A. Generally. Although both are arms of the Executive Branch, the Federal law enforcement and intelligence communities have very distinct identities, mandates, and methods. For the purpose of this chapter, the law enforcement community (LEC) includes all Federal investigative and prosecutive agencies. The intelligence community (IC) includes the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, and the National Reconnaissance Office. It also includes the intelligence components of the Department of State, Federal Bureau of Investigation, Department of Treasury, Department of Energy, and the respective military services. The mission of the LEC is to identify, target, investigate, arrest, prosecute, and convict those persons who commit crimes in violation of Federal laws. The mission of the IC is to perform intelligence activities necessary for the conduct of foreign relations and the protection of the national security, including the collection of information and the production and dissemination of intelligence; and the collection of information concerning espionage, international terrorist activities, and international narcotics activities.

The Federal LEC must carry out its mission in accordance with the provisions of the United States Constitution, case law, statutes, and rules of procedure and evidence. Its compliance with those constraints is continually monitored by the judicial branch. Through its internal affairs and professional responsibility offices, the components of the LEC also perform self-monitoring of the legality of its investigative activities. *See* the Criminal Resource Manual at 2053 (Disclosure Of Grand Jury Information To An Intelligence Agency).

The IC carries out its mission in accordance with the United States Constitution, the National Security Act of 1947 and other statutes, case law, and with select Executive Orders issued by the President, primarily E.O. 12958 (issued by President Clinton on October 14, 1995). The IC's compliance with legislative constraints is monitored by the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee On Intelligence (HPSCI). The IC also polices itself through its various inspectors general offices.

The two communities occasionally find themselves mutually affected by a criminal case, such as when a defendant seeks access to classified information to assist in his/her defense. When that occurs, an issue of major concern to both communities is the adequate protection of sensitive intelligence sources and methods. This protection is accomplished by the prosecutor through invocation of CIPA, and by the IC, by placing restrictions on access to the information, or by including special warnings and caveats that restrict the use of the information.

Although coordination on matters of common concern is critical to the proper functioning of the two communities, prosecutors must be aware of the concomitant need of both communities to maintain a well-delineated separation between criminal prosecutions and foreign intelligence activities, in which less-stringent restraints apply to the government. Not to do so may invite the perception of an attempt to avoid criminal law protections by disguising a criminal investigation as an intelligence operation. The judicial response

to that may be the suppression of evidence in the criminal case, e.g., *United States v. Truong Dinh Hung*, 629 F.2d 908 (4th Cir. 1980).

B. Approval to Request a File Search. Initial contacts with the IC by the Department of Justice (Department), or by any United States Attorney's Office (USAO), for the purpose of requesting a search of IC files in connection with a criminal investigation or prosecution must be approved by the Criminal Division's ISS. A request to the ISS by a USAO for a search of IC files for preexisting intelligence information relevant to a criminal investigation or indictment must be in writing and must have been approved by the United States Attorney (USA) or a senior designee, e.g., the First Assistant, or the National/International Security Coordinator.

Such requests shall be undertaken only when there exist objective articulable facts justifying the conclusion that

- (1) within specific files, or category of files, there will likely be information of which the prudent prosecutor should be aware in deciding whether, or against whom, or for what offenses to seek an indictment from the grand jury;
- (2) there are intelligence-related issues likely to arise post-indictment that the prosecutor should address preemptively, and that searching IC files is likely to produce information helpful to resolving those issues; or
- (3) there are documents or information within the intelligence community that fall reasonably within the scope of the prosecutor's affirmative discovery obligations to the defendant, as that scope has been defined by the Federal courts.

That the information within the possession of the intelligence community is classified shall have no effect either on the prosecutor's obligation to undertake the review of IC files or on the legally-mandated scope of that review. Similarly, except as modified by CIPA, the prosecutor's obligation to produce to the defendant information found during that review is unaffected by the classified nature of that information. See the Criminal Resource Manual at 2052, for a discussion of discovery, Brady/Giglio issues, and miscellaneous related issues.

C. The Search Request. Immediately upon the prosecutor's conclusion, based on the principles outlined above, that a search of IC files is appropriate, the prosecutor should consult with the district National/International Security Coordinator and initiate telephonic contact with the Criminal Division's ISS. The United States Attorney or his/her designee must approve the Assistant United States Attorney's request before it is submitted to the ISS. See paragraph B, *supra*. The ISS, in consultation with the Office of Intelligence Policy and Review (OIPR), will determine whether a search of IC files is appropriate. If there is a determination that a search of IC files is appropriate under the circumstances described by the prosecutor, the prosecutor will be required to prepare a written search request to be submitted to the IC agencies through the ISS.

In line with the Department's general policy, search requests must be focused, narrowly drawn, and based upon carefully reasoned and case-specific grounds. Each request should be accompanied by a prosecution memorandum that sufficiently identifies the individual and corporate targets of the investigation (e.g., full name, known aliases, date of birth, place of birth, social security number, citizenship, etc.); that summarizes the evidence already known about those targets (specifically that which the prosecution believes justifies a search of IC files). Ordinarily, the prosecutor should confine the search request to a period of time that conforms with that of the underlying criminal activity that necessitates the search and that specifies the type of information that is sought (e.g., what, if any, witting relationship the person has had or currently has with an IC agency, payments made to the person, criminal activity known by the IC agency to have been committed by the person in question, etc.). If the prosecutor's search request pertains to witnesses who will testify for the government, the same information should be provided as to them.

The prosecutor should avoid asking an IC agency any conceptual questions or to draw any conclusions about the entities named, especially conclusions of a legal nature. Rather, the search request should present questions

that require answers consisting of discrete facts that will enable the prosecutor to draw conclusions concerning the broader conceptual issues extant in his/her case.

D. Submitting the Search Request to the IC. The Criminal Division, ISS, acting on behalf of the prosecutor, will formally transmit the search request to the appropriate element(s) of the IC. In some cases, that request may be followed by a planning and strategy meeting between the assigned prosecutors, the ISS, and representatives of the appropriate IC agencies.

To expedite the pace of the search, the prosecutor should request that each IC agency obtain limited third agency waivers from other IC agencies for purposes of the initial review of documents in response to the search request. Except with certain very sensitive types of classified information, this will normally allow an agency that possesses a responsive classified document originated by another agency to produce that document to the prosecutors without having first to obtain the permission of the originating agency. Any subsequent disclosure or dissemination beyond the prosecutor's initial review of the documents must first be approved by the originating agency.

E. Review of Documents Identified by the IC as Responsive to the Search Request. Members of the prosecution team (including the attorneys and investigators) must have all necessary security clearances before they will be permitted access to classified information. This may be accomplished by contacting the Security Programs Staff for the Executive Office for United States Attorneys. In some instances when delay should be avoided, an uncleared Assistant United States Attorney may have the National/International Security Coordinator or an attorney from the ISS review selected documents. During the review of classified information, it is crucial that all regulations pertaining to the handling of classified information be observed. The Justice Management Division's Security and Emergency Planning Staff will assist the prosecutor in taking the necessary measures in the USAO's to physically and administratively protect any classified information that is determined to be relevant to a particular case.

The prosecutor must also be prepared to undertake appropriate measures for keeping track of the IC documents that are produced in response to a search request. Depending on the volume of documents produced, the administrative burden of that process may be enormous. A critical part of that burden will be the establishment of procedures for identifying what documents are produced by the IC agencies, and, thereafter, for indexing those documents that the prosecutor has reviewed and determined to be relevant to the case. In all events, classified documents obtained from the IC must be secured in the appropriate Department approved receptacle and segregated from investigative documents produced by law enforcement agencies. The Department's Security and Emergency Planning Office and ISS are available to advise the prosecutor on such matters.

9-90.230 Disclosure Of Classified Information to the Grand Jury

Grand jurors do not have the security clearances required for access to classified information. Accordingly, disclosure of such information to a grand jury may only be done with the approval of the agency responsible for classifying the information sought to be disclosed.

There are measures that a prosecutor can take that will increase the likelihood that the appropriate IC agency will approve the use of its information before the grand jury. First and foremost is the use of an unclassified summary of the information prepared by the prosecutor in concert with the intelligence agency. In other instances, the agency may simply be able to declassify the particular document(s) involved, in whole or in part, by excising certain portions that make the document particularly sensitive but that are not relevant to the use desired by the prosecutor.

Of greater difficulty would be the request of a prosecutor that an intelligence agency officer or asset testify as a witness before the grand jury. If a target of the grand jury investigation was, or is, an intelligence officer, asset, or other employee of the intelligence community, in addition to the usual concerns related to the appearance

of a target before the grand jury, the prosecutor must take care to protect against "retaliatory" testimony by that individual, in the form of unauthorized disclosure of classified information. Accordingly, prior to any grand jury appearance by such target, the Assistant United States Attorney, in coordination with the ISS, must consult with any intelligence agency whose information may be disclosed by the target's testimony. As a rule, because hearsay testimony is permissible before the grand jury, the prosecutor will likely have alternatives, such as the testimony of a summary witness, that would obviate the need for the agency officer's testimony before the grand jury. If a summary witness is not a viable option, however, the prosecutor must obtain the approval of the ISS before making any effort to secure the presence before the grand jury of an intelligence agency officer or asset. The ISS will assist the prosecutor as much as possible in arranging for that testimony or in structuring an alternative thereto that will provide essentially the same information to the grand jury.

9-90.240 Classified Information Procedures Act (CIPA)

The Internal Security Section (ISS) is responsible for the development and implementation of policies and procedures related to CIPA. All Assistant United States Attorneys and departmental attorneys prosecuting CIPA cases are required to consult with, and closely coordinate, their cases with the ISS. In particular, prosecutors must:

1. notify ISS if a district court or appellate court will not accept a substitution proposed by the government under section 6(c);
2. obtain the prior approval of the Solicitor General to file an interlocutory appeal under Section 7(a) of CIPA; and
3. immediately notify ISS if it becomes likely that an intelligence agency employee will testify in any criminal case.

See the Criminal Resource Manual at 2054, for a synopsis of CIPA. ISS is also responsible for the preparation of reports to Congress concerning cases in which prosecution is declined for national security reasons and reports concerning the operation and effectiveness of the act.

9-90.300 Policies for the Prosecution of Espionage, Export and Other Internal Security Offenses

Chapter 37 of 18 U.S.C. proscribes espionage and related activities. All prosecutions under Chapter 37 shall be initiated and conducted in accordance with USAM 9-90.020. Various statutes supplement the provisions of Chapter 37 to criminalize activities that jeopardize the national defense or national security. Key national defense and national security provisions are synopsized in the Criminal Resource Manual at 2057. Prosecutions pursuant to these provisions must also be instituted and conducted in accordance with USAM 9-90.020. The Internal Security Section supervises prosecutions of espionage and espionage related offenses.

9-90.400 Atomic Energy Act

Prosecutions under the Atomic Energy Act, 42 U.S.C. §§ 2272 to 2276, are subject to the requirements of USAM 9-90.020 when they involve the national security. The Atomic Energy Act provides that prosecutions pursuant to it shall be commenced by the Attorney General, after he or she has notified the Nuclear Regulatory Commission. See 42 U.S.C. § 2271(c). Prosecutions brought pursuant to 42 U.S.C. §§ 2272 to 2276 must be expressly authorized by the Attorney General. See the Criminal Resource Manual at 2058.

9-90.440 Other Prohibited Transactions Involving Nuclear Materials -- 18 U.S.C. § 831

The Convention on the Physical Protection of Nuclear Materials Implementation Act of 1982, Pub.L. No. 97-351, makes it a criminal offense: (1) to possess unlawfully or use nuclear material when it will cause substantial injury; (2) to take or use nuclear material without authorization, or to obtain nuclear material fraudulently; or (3) to threaten or attempt to use nuclear material for illegal purposes. *See* 18 U.S.C. § 831.

9-90.500 Internal Security

Numerous offenses pertaining to the internal security of the United States can be prosecuted only with the approval of, and under the supervision of, the Assistant Attorney General of the Criminal Division, or higher authority. Brief synopses of key internal security provisions are provided in the Criminal Resource Manual at 2059. Authorization and supervision requirements are found at USAM 9-90.020. The Internal Security Section of the Criminal Division supervises prosecutions involving internal security.

9-90.550 Contempt of Congress -- 2 U.S.C. § 192

The Internal Security Section has jurisdiction over prosecutions under 2 U.S.C. § 192 in which witnesses have Communist Party or other subversive connections. Under the provisions of 2 U.S.C. § 194, contempt of Congress cases are referred directly by the Congress to the United States Attorney, by certification. If such a case is referred to a United States Attorney, in accordance with the USAM 9-90.020 he or she should immediately notify the Criminal Division, and no prosecution shall be initiated without prior authorization by the Criminal Division.

9-90.600 Export Control and Unlawful Transactions with Foreign Countries

The prosecution of any violation of export control statutes shall be authorized only in accordance with USAM 9-90.020 unless otherwise noted.

The Chief of the Export Control Unit of the Internal Security Section supervises prosecutions of export control offenses, and can be reached at (202) 514-1213.

See also the Criminal Resource Manual at 2060 (Overseas Investigations of Export Control-Related Cases).

9-90.610 Export Administration Act -- 50 U.S.C.App. §§ 2401 to 2420

The Export Administration Act, 50 U.S.C. App. §§ 2401 to 2420, and the rules and regulations promulgated thereunder, 15 C.F.R. §§ 768 to 799, prohibit the exportation of strategic goods and technologies without a license from the Department of Commerce. Violations are investigated by the Department of Commerce and the Customs Service.

The prosecution of Export Administration Act violations frequently involves foreign policy, national security, and intelligence issues that require close coordination with the Department of Commerce, Department of State, the CIA and other agencies. Therefore, prosecution of Export Administration Act violations shall not be undertaken without the prior approval of the Criminal Division. *See* USAM 9-90.020. However, the United States Attorney is authorized to take whatever action is necessary to prevent the commission of an offense where time does not permit seeking prior authorization. Often an illegal exportation can be prevented by seizing the items that are about to be exported. Seizure of strategic goods and technologies that are about to be exported in

violation of the Export Administration Act is authorized by 50 U.S.C.App. Sec. 2411(a)(2)(B) and 3(A), and 22 U.S.C. Sec. 401.

9-90.620 Arms Export Control Act -- 22 U.S.C. § 2778

The Arms Export Control Act, 22 U.S.C. § 2778, and the rules and regulations promulgated thereunder, 22 C.F.R. § 121-130, prohibit the importation and exportation of arms, ammunition and implements of war without a license from the Department of State. Violations are investigated by the Customs Service.

Unless the unlicensed shipment has no relevance to the foreign relations of the United States (e.g., smuggling small quantities of weapons), prosecution of violations of the Arms Export Control Act should not be undertaken without prior approval of the Criminal Division. *See* USAM 9-90.020. However, the United States Attorney is authorized to take whatever action is necessary to prevent the commission of an offense where time does not permit seeking prior authorization. Often an illegal exportation can be circumvented by seizure of the munitions pursuant to the provisions of 22 U.S.C. § 401.

9-90.630 Trading With the Enemy Act -- 50 U.S.C.App. § 5(b)/Foreign Assets Control

Pursuant to the authority granted in the Trading With the Enemy Act, 50 U.S.C.App. § 5(b), the Secretary of the Treasury has promulgated regulations prohibiting unlicensed transactions between U.S. nationals and certain designated foreign countries and their nationals. *See* 31 C.F.R. § 500.101. Investigations of violations of the Foreign Assets Control regulations are conducted by the Treasury Department, and cases are referred by that Department to the ISS. The ISS must be consulted before charging violations of the Trading With the Enemy Act.

9-90.640 International Emergency Economic Powers Act -- 50 U.S.C. § 1701 et seq.

Pursuant to the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 to 1706, the President is granted authority to declare a national emergency with respect to any unusual and extraordinary threat, which has its source outside the United States, and to take action to meet that threat including the imposition of controls over property in which any foreign country or a national thereof has an interest. Criminal violations are investigated by the Treasury Department. Prosecution of violations which involve the exportation of property in which a foreign national or foreign country has an interest shall not be undertaken without prior approval of the Internal Security Section of the Criminal Division. *See* USAM 9-90.020.

9-90.700 Registration and Lobbying Provisions

The ISS enforces four registration statutes: (1) the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 et seq.; (2) the Voorhis Act, 18 U.S.C. § 2386; (3) the Act of August 1, 1956, 50 U.S.C. §§ 851 to 857; and (4) the Federal Regulation of Lobbying Act, 2 U.S.C. § 261 et seq.; and a related statute, 18 U.S.C. § 219, which is a conflict of interest provision. The express prior approval of the Criminal Division or higher authority must be obtained before prosecution may be initiated under any of these provisions. *See* USAM 9-90.020. In addition, the ISS is responsible for the supervision of prosecutions under 2 U.S.C. § 441e, the foreign campaign contribution prohibition. The ISS should be consulted before initiating grand jury proceedings, or seeking an indictment or filing an information under these provisions. In addition, the Internal Security Section or higher authority must be consulted prior to the dismissal of any counts pursuant to the Foreign

Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 et seq. *See* USAM 9-90.020. *See also* the Criminal Resource Manual at 2061. For additional information concerning the Foreign Agents Registration Act see the Criminal Resource Manual at 2062 and 2063.

9-90.710 Foreign Agents Registration Act -- 22 U.S.C. § 611 et seq.

The Foreign Agents Registration Act (FARA) requires that agents of foreign principals engaged in political or quasi-political activities register with the Attorney General unless exempt. Inquiries regarding administration and enforcement of FARA should be directed to the Registration Unit, Criminal Division, Department of Justice, Washington, D.C. 20530. No prosecution under FARA may be instituted without the express prior approval of the Criminal Division or higher authority. See the Criminal Resource Manual at 2062 and 2063 for an in depth discussion of FARA.

9-90.720 Public Officials Acting As Agents Of Foreign Principals -- 18 U.S.C. § 219

It is illegal for a public official to act as an agent of a foreign principal in such a manner as to require his/her registration under the Foreign Agents Registration Act (FARA). *See* 18 U.S.C. § 219. This prohibition does not apply to the employment of a foreign agent as a special United States Government employee in any case where the head of the employing agency certifies that such employment is required in the national interest. No prosecution under this section should be instituted without the express authorization of the Criminal Division or higher authority. *See* USAM 9-90.020. *See also* the Criminal Resource Manual at 2064 and 2065.

Note that Members of Congress are not expressly covered by 18 U.S.C. § 219.

9-90.800 Miscellaneous

Prosecutions pursuant to criminal statutes not primarily concerned with national security may affect national security. In such situations, prosecutions shall be instituted and conducted under the supervision of the Assistant Attorney General, Criminal Division, or higher authority.